

JUNE 13, 2013

Mr. Connell R. Rader
President
Enmark Energy, Inc.
104 First Choice Drive, Suite A
Madison, MS 39110

Re: CPF No. 2-2013-6002

Dear Mr. Rader:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$20,000. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer, dated April 9, 2013. This enforcement action is now closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Wayne T. Lemoi, Director, Southern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

)	
In the Matter of)	
)	
Enmark Energy, Inc.,)	CPF No. 2-2013-6002
)	
Respondent.)	
)	

FINAL ORDER

On October 16, 2012 and October 17, 2012, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Enmark Energy, Inc., (Enmark or Respondent) in Madison, Mississippi. Enmark operates and maintains over one hundred miles of high-pressure natural gas and carbon dioxide lines, in the state of Mississippi.¹

As a result of the inspection, the Director, Southern Region, OPS (Director), issued to Respondent, by letter dated March 11, 2013, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enmark had violated 49 C.F.R. §§ 195.440(a), 195.440(b) and 195.440(e); and proposed assessing a civil penalty of \$20,000 for the alleged violations.

Enmark responded to the Notice by letter dated April 9, 2013 (Response). The company did not contest the allegations of violation and paid the proposed civil penalty of \$20,000, as provided in 49 C.F.R. § 190.227, on April 9, 2013. Payment of the penalty serves to close the case with prejudice to Respondent.

FINDINGS OF VIOLATION

In its Response, Enmark did not contest the allegations in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

¹ See, <http://enmarkenergy.com/About.html>, last accessed May 9, 2013.

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program meeting the general program requirements of API RP 1162 and its written procedures. The Notice alleged that although Enmark developed its Public Awareness and Damage Prevention Program (PADPP), the company did not properly implement its program in accordance with its written procedures, Section 8.2.3, "Measuring Program Effectiveness." Specifically, Enmark's PADPP, Section 8.2.3, requires that the company perform an annual review of its program by internal self-assessments, third-party audits or regulatory inspections. Enmark was unable to provide any records or other documentation to demonstrate that it had reviewed its public awareness program to ensure proper implementation. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program meeting the general requirement of API RP 1162 and its written procedures that required an annual review of its PADPP to ensure proper implementation.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a), which states:

§ 195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.3).

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(a) by failing to implement a written continuing public education program that followed the guidance provided in API RP 1162 and Section 8.3 of its PADPP procedures. Specifically, the Notice alleged that Enmark failed to perform a program effectiveness evaluation as set forth in Section 8.3 of its procedures. Although Enmark had surveyed and collected data from others regarding its public education program, the collection of data did not constitute a program effectiveness evaluation of Enmark's public education program. Further, the information collected did not relate to Enmark's carbon dioxide pipelines nor was there any analysis of the data collected. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(a) by failing to perform a program effectiveness evaluation.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b), which states:

§ 195.440 Public awareness.

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and

characteristics of the operator's pipeline and facilities.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(b) by failing to implement a continuing public education program that assessed the unique attributes and characteristics of Enmark's pipeline system. Specifically, the Notice alleged that from 2007 until 2011 Enmark provided brochures to the public that did not describe the types of products it transported or the unique attributes and characteristics of the products in Enmark's pipelines. Enmark transports carbon dioxide but the brochures provided information about the transportation of petroleum products. These products have significantly different attributes and characteristics. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(b) by failing to provide the target audience with the proper information regarding the unique attributes and characteristics of its pipelines.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.440(e), which states:

§ 195.440 Public awareness.

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

The Notice alleged that Respondent violated 49 C.F.R. § 195.440(e) by failing to include in its public education program baseline message materials, sufficient information for local municipalities, school districts, businesses, and residents to be able to locate and identify Enmark's pipelines and failing to provide them with the appropriate contact information for the company. Specifically, the Notice alleged that from 2007 to 2011, Enmark failed to properly identify the location of its pipelines, only providing information regarding the National Pipeline Mapping System and how someone could obtain the location of its pipelines. Additionally, Enmark failed to provide its necessary contact information should an emergency arise, only providing public service contact information. Enmark was required to provide information regarding the location of its pipelines and at least provide its name and contact information as the entity to call should an issue arise regarding its pipeline. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.440(e) by failing to provide the necessary information regarding its pipelines and who to contact should and incident occur.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any

related series of violations.² In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$20,000 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.440(a), for failing to implement a written continuing public education program that followed the guidance provided in API RP 1162 and Section 8.3 of its PADPP procedures. Enmark paid the proposed penalty, which serves to close this Item with prejudice and authorizes PHMSA to make a finding of violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.440(a).

Item 3: The Notice proposed a civil penalty of \$10,000 for Respondent's violation of 49 C.F.R. § 195.440(b), for failing to implement a continuing public education program that assessed the unique attributes and characteristics of Enmark's pipeline system. Enmark paid the proposed penalty, which serves to close this Item with prejudice and authorizes PHMSA to make a finding of violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,000 for violation of 49 C.F.R. § 195.440(b).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$20,000**, which has been paid in full.

WARNING ITEMS

With respect to Items 1 and 4, the Notice alleged probable violations of Part 195.440 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warning(s) were for:

49 C.F.R. § 195.440(a) (**Item 1**) — Respondent's alleged failure to perform an annual review of its Public Awareness and Damage Prevention Program in accordance with Section 8.2.3 of Enmark's program, "Measuring Program Effectiveness;" and

² The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, § 2(a)(1), 125 Stat. 1904, January 3, 2012, increased the civil penalty liability for violating a pipeline safety standard to \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.

49 C.F.R. § 195.440(e) (**Item 4**) — Respondent’s alleged failure to include in its public education program baseline message materials with sufficient information for local municipalities, school districts, businesses and residents to be able to locate and identify its pipelines and provide them with Enmark’s appropriate contact information.

Enmark presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued